STATE OF MAINE
PUBLIC UTILITIES COMMISSION

November 5, 2004

Docket No. 2004-262

PUBLIC UTILITIES COMMISSION RULEMAKING, Abandonment of Service and Authority to Provide Service and Transfer of Customers by Competitive Telecommunications Carriers (Chapter 293)

ORDER ADOPTING RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we adopt a new Chapter 293 that will govern the abandonment of service, the abandonment of authority to provide service and the transfer of customers by competitive telecommunications carriers.

II. BACKGROUND

The Commission has granted authority to provide service to a large number of competitive interexchange and local exchange service providers during the past several years. Presently about 320 carriers have authority to provide intrastate telephone service in Maine. It is inevitable that some of these carriers will choose not to provide service for economic or other reasons. The Commission often receives letters or applications from competitive carriers stating that the carrier is no longer doing business in Maine, or no longer wished to do so, or that it was relinquishing its authority to provide telecommunications services.

The Commission has processed these cases pursuant to the provisions of 35-A M.R.S.A. § 1104, which states:

> **§1104. Abandonment of property or service**
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> **1. Commission approval.** No public utility may abandon all or part of its plant, property or system necessary or useful in the performance of its duties to the public, or discontinue the service which it is providing to the public by the use of such facilities, without first securing the commission's approval.
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> **2. Terms and conditions.** In granting its approval, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. A public utility abandoning all or part of its plant, property or system or discontinuing service pursuant to authority granted by the

commission under this section is deemed to have waived all objections to the terms, conditions or requirements imposed by the commission in that regard.

A majority of requests to abandon service are from carriers stating that they presently have no intrastate customers in Maine. These requests are relatively easy to process routinely. Most importantly, there is no need to provide notice to customers. Nevertheless, in each case it has been necessary for Commission staff to draft and for the Commission to consider and issue an order granting the request. If a carrier does have customers, the process is more complex. Most carriers have made clear that they have or will provide notice to the customers whose service will be terminated, and many of those have provided a copy of the notice with their filings. For those that have failed to indicate that they will provide, or have provided, notice, it has been necessary to contact the carrier and discuss the notice issue. Carriers that are abandoning service and simultaneously transferring their customer base to a different carrier present the most complex set of issues, as discussed below. The transfer of customers is addressed by FCC regulations that apply to both interstate and intrastate service, and compliance with those rules by the vast majority of carriers has made the process simpler. Nevertheless, in many cases it is necessary to issue new authority to provide service to the carrier that will obtain the customer base.

With this Rule, we seek to make the processes outlined above as self-executing as possible. When the Administrative Director receives a filing that does not provide sufficient information, the applicant will be provided with a copy of the Rule and requested to provide the information that is necessary for the Administrative Director to categorize and process the case. Once that information is received (either initially or on request), approval generally will be automatic. In most cases it will not be necessary to issue an order.

We describe the features of the Rule below.

III. COMMENTS

Verizon Maine and the Telephone Association of Maine (TAM) filed comments in the rulemaking. Verizon commented on Sections 10 and 11. TAM filed comment only about Section 10. We describe and respond to those comments in our discussion of those sections.

IV. DISCUSSION OF INDIVIDUAL SECTIONS OF THE RULE

A. Sections 1 and 2.

Section 1 defines the scope of the Rule. The simplified procedures contained in the Rule apply to “competitive telecommunications carriers” only. It applies to whole or partial abandonments of service and relinquishing of authority, to transfers of customers and, when necessary for a transfer of customers, to the granting of authority to provide service. It does not apply to discontinuances of individual service offerings.

Section 2 contains definitions that are used in the Rule. The definition "competitive telecommunications carrier" is particularly important to the Rule because it is used in Section 1 for determining which carriers will be subject to the waiver of the approval requirements of 35-A M.R.S.A. § 1104 and the simplified procedures of the Rule. Recently adopted Chapter 212 waived the other approval requirements in Chapter 11 of Title 35-A (sections 1101-1103) for the same entities as those described in this Chapter's definition of "competitive telecommunications carrier" in Section 2(E), i.e., competitive interexchange carriers and competitive local exchange carriers (CLECs), but not including CLECs that receive funding from the Maine Universal Service Fund (MUSF). (At present, there are no CLECs that receive such funding.) The authority to waive all of the approval requirements in 35-A M.R.S.A. §§ 1101-1104 is contained in 35-A M.R.S.A. § 1105.

In another recent rulemaking, we applied less stringent standards to a slightly narrower class of CLECs – those CLECs that are "eligible telecommunications carriers" (ETCs) pursuant to 47 U.S.C. § 214(e). ETCs must comply with the more stringent standards of Chapter 290 (Standards for Billing, Credit and Collection, and Customer Information for ETCs). By contrast, Chapter 291 (Standards for Billing, Credit and Collection, and Customer Information for Non-ETCs) applies to other CLECs. An ETC might receive federal USF, but not state USF.

The draft rule proposed to exclude only MUSF recipients from the definition of "competitive telecommunications carrier" and from the simplified procedures of the Rule on the ground that there is no compelling policy reason to require ETCs that do not receive state USF funding (and may only receive federal universal service funding) to obtain full approval of the Commission in order to discontinue service or relinquish authority to provide service. By contrast, if the Commission determines that the public interest requires that a CLEC receive universal service funding, it has determined that there is some public benefit to that CLEC providing the service that the funding supports. We therefore believe that we should be actively involved in any proposal by a MUSF-funded CLEC to discontinue service. We specifically requested comment, however, on whether the definition of "competitive telecommunications carrier" should instead follow the dichotomy established by Chapters 290 and 291, such that the waiver of the approval requirements of Section 1104 would be inapplicable to all ETCs, including those that do not receive MUSF funding. We received no comment on this subject and will adopt the definition of "competitive telecommunications carrier" proposed in the Rulemaking.

B. Section 3: Notice and Application for Abandonment of Service or for Transfer of Customers.

Section 3 describes the process that will occur when a carrier provides any form of notice to the Commission that it does not wish to continue to provide service. Subsection A requires the Administrative Director to docket the request as a pending case before the Commission. Docketing is necessary primarily as a tracking tool so that Commission personnel and the public may determine whether a carrier is authorized to provide service and, if not, when its authority ceased. Subsection B describes other materials that must accompany a filing and requires the Administrative Director to request those materials from the applicant if they were not filed. Subsection C more broadly allows the Administrative Director to request any information that is necessary for the processing of the case, and gives a number of specific examples.

C. Section 4: Abandonment of All Service and Termination of Authority When a Competitive Carrier Has No Customers.

Section 4 governs the simplest type of abandonment of service: by a carrier that has no customers. Generally, if a carrier states that it has no customers, is abandoning service and seeks approval to relinquish its authority to provide service,[1] no Commission approval is necessary and the abandonment and termination of authority will be effective seven days after filing. Section 4 contains three exceptions to the general rule of automatic approval and termination. The first is when there are Commission proceedings or consumer complaints before the Commission's Consumer Assistance Division that are pending against the utility. The second is when a carrier that previously had customers has already abandoned service to those customers without obtaining the approval of the Commission. The third is when the carrier owes money to the Commission for the Commission's assessment of utilities under 35-A M.R.S.A. § 116, to the Maine Universal Service Fund, or to the Maine Telecommunications Education Access Fund. In all three cases, it may be necessary for the Commission to defer approval of abandonment so that it may retain jurisdiction over the utility for enforcement purposes. Similarly, Sections 5 and 6, discussed below, contain the first two of these exceptions. It is not necessary to include the third for carriers that are not abandoning all service because the Commission will retain jurisdiction over those carriers.

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[1] Section 2(A) defines "abandonment of service." Under that definition, the Administrative Director will liberally interpret various statements by carriers as constituting a request to abandon service and to terminate authority. Letters from carriers commonly state that the carrier is "canceling," "withdrawing" or "revoking" its authority or certificate or that it is "no longer doing business in the state." Under the proposed rule, all such statements will be considered to be notice by the carrier, pursuant to 35-A M.R.S.A. § 1104 and this Chapter, to abandon service and to terminate the carrier's authority (under Sections 4 and 6 of the Rule, if the abandonment is complete) or to abandon a portion of the carrier's service (under Sections 5 and 7).

D. Section 5: Abandonment of All Service and Termination of Authority for a Service Category by a Competitive Carrier That Has No Customers in That Service Category.

Section 5 governs a situation similar to that of Section 4: a carrier seeks to abandon service and relinquish authority to provide service for a specific service category (e.g., interexchange or local exchange service), and the carrier presently has no customers in that class or category. It intends, however, to continue to provide other categories of service. We have always granted authority to provide interexchange service or local exchange service or both. Accordingly, the carrier is not relinquishing its authority (certificate of public convenience and necessity) to provide a portion of its service. Because the carrier will be retaining some authority, subsection B requires the carrier to remove the abandoned services from its rate schedules.[2] (If the carrier has authority to provide only interexchange or only local service and is relinquishing the whole of that authority, Section 4 applies.) In all other respects, Section 5 is the same as Sections 4 and 6 except that it does not contain the third exception in Section 4(B) (that approval for abandonment is required if the carrier owes money to the Commission or to funds administered by the Commission). That exception is not necessary because the carrier will remain in business in Maine.

E. Section 6: Abandonment of All Service to a Customer Class by a Competitive Carrier That Has No Customers In That Class

Section 6 governs situation where a carrier seeks to abandon service and relinquish authority to provide service to a specific customer class (e.g., residential customers or business customers), and presently has no customers in that class. It intends, however, to continue to provide service to other classes. Because we have never granted authority to provide service on the basis of residential or business classifications, however, while the carrier will no longer provide service to a specified class, it is not relinquishing any portion of its authority (certificate of public convenience and necessity) to provide service. Section 6 therefore treats this kind of "abandonment" solely as a change in the telephone utility's rate schedules. In all other respects, Section 6 is the same as Sections 4 and 5 except that it does not contain the third exception of Section 4(B) (that approval for abandonment is required if the carrier owes money to the Commission or to funds administered by the Commission) because the carrier will remain in business.

[2] Under 35-A M.R.S.A. § 304, "rate schedules" include "all terms and conditions filed with and as part of the schedules that in any way affect the rates charged for any service." Section 2(F) of the proposed Rule (definition of "rate schedules") contains similar language.

F. Sections 7, 8 and 9: Abandonment and Relinquishing Authority When Carrier Has Affected Customers

Sections 7, 8 and 9 parallel Sections 4, 5 and 6 and apply when a carrier has customers who will be affected by the abandonment or termination of authority. Section 7 applies when a carrier is abandoning all service and relinquishing all authority. Section 8 applies when a carrier is abandoning service and relinquishing authority for a specific service category, e.g., interexchange or local service. Section 9 applies when a carrier is abandoning service to a specified customer class, e.g., residential or business.

The major difference between Sections 7, 8 and 9 and Sections 4, 5 and 6 is that Sections 7, 8 and 9 contain a customer notice requirement. In addition, they do not contain the second exception in Sections 4, 5 and 6. That exception states that approval is required if a carrier states it has no customers, but it appears that it previously had customers and abandoned service to them without obtaining approval. That exception cannot apply in Sections 7, 8 and 9 because, by definition, the carrier is not claiming that it presently has no customers. In all other respects, Section 7 is the same as Section 4 and Sections 8 and 9 are the same as Sections 5 and 6.

G. Section 10: Default Carrier if Customer of Abandoning Local Exchange Carrier Fails to Select a New Carrier

Section 10 addresses what occurs if a customer fails to obtain local exchange service from another local exchange carrier (LEC) when the customer's competitive local exchange carrier has abandoned service (whether in compliance with the Rule or not). There are three circumstances under which the customer may fail to choose a new LEC. First, the customer may fail to take action in response to the notice provided by the abandoning CLEC. Second, a residential customer might be away from home for the entire notice period and see the notice for the first time after service has been terminated. Third, the abandoning CLEC may fail to provide the notice that is required by the Rule or provide notice that is so untimely that few customers can take action in time.

The draft rule contained two alternative versions of Section 10. Under the first version (included in the draft rule) the abandoning CLEC would have to provide E-911 (emergency) service for a limited time following the discontinuance of all other forms of local service. Under the second version (included as an appendix), would have required the underlying carrier (if there is one) to provide full local exchange service. The two alternatives differed in the extent of the service itself (E-911 only versus full service). In addition, the first (E-911) alternative would place the obligation on the abandoning CLEC; the second (full service) would require the underlying carrier to provide the service.

In the Notice of Rulemaking (NOR), we proposed to adopt the E-911 alternative only, but presented the full-service alternative for comment. Only Verizon addressed the choice between the two alternatives and it vigorously opposed the full-

service alternative. We adopt the more limited alternative (requiring E-911 access only), but have modified it in response to a comment by Verizon.
Section 10 applies only to abandonments by competitive local exchange carriers (CLECs) because only LECs provide access to E-911. Section 10 does not apply to transfers of customers pursuant to Section 12 because those customers will be transferred to a LEC that provides all local services, including E-911 access.

We requested comments on which, if either, of the two alternative versions of Section 10 we should adopt and welcomed proposals for modifications of either alternative.

1. Rejection of Full Service Alternative

In the NOR we proposed adoption of the E-911 alternative rather than the full service alternative, primarily because of operational concerns expressed by Verizon prior to the rulemaking. As noted above, the full service alternative would have placed the obligation to provide service on a default basis on the underlying carrier. By contrast, the adopted E-911 alternative places the obligation on the abandoning CLEC. Draft Section 10(A) stated that the underlying LEC must have the technical ability to provide the service and the ability to identify customers who had not selected another carrier. As a practical matter, it is not possible to take over a customer that has been served by a facilities-based CLEC. Underlying carriers also provide service through resale of their own local service or through the provision of all unbundled network elements (known as unbundled network elements platform or UNE-P). Although there is no physical difference between the provision of service through resale and UNE-P, Verizon claims that it is far more difficult to take over a customer that is served in that manner. It appears, however, at least at the present time, that many more CLECs obtain service through UNE-P than through resale.

Pursuant to an inquiry from the Commission staff prior to the commencement of the rulemaking, Verizon stated that substituting its service for that of a departing CLEC that used UNE-P is difficult because the only information possessed by Verizon is the customer location, and because it does not have any information that would be necessary to bill or even contact the customer. Verizon stated that it has greater information if the CLEC is a reseller, but the information is likely to be inaccurate in many cases. At this point, many more CLECs use UNE-P than resale. Set forth below are excerpts from Verizon's response to the Staff's inquiry:

> …[Verizon] assum[es] by your question that you have in mind the technical ability to transfer the end user's basic service unilaterally, in instances where the end user has failed, in response to a Notice from the exiting CLEC, to make an affirmative choice. (Any carrier, after all, has the technical ability to provide basic service if the end user contacts the carrier to subscribe to the carrier's basic service.)

> The only basic service arrangement that Verizon Maine has a technical ability to transfer unilaterally to itself is resale. Because the CLEC serves its end user by reselling Verizon Maine's basic exchange service, Verizon has certain information about the end user's account and the end user's telephone number in its switch to be able to transfer the end user from CLEC service to Verizon service. However, the customer information Verizon has on resale accounts relates to customer listing and service address. This creates many practical obstacles to correct billing and payment. Verizon would not necessarily have the correct name of the individual responsible for payment of the service, nor would Verizon have the address where the end user wants the bill sent. Many bills are sent to "PO Box" addresses; or a billing address might be different from the service address (e.g., a bill for a summer home might be sent to the primary residence). In addition, the transfer to Verizon is made "as is" and certain features that the end user obtained from the CLEC or another provider (e.g., voice mail) may be lost.
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> Where the CLEC serves its end users over a UNE-P arrangement, however, Verizon cannot unilaterally transfer service because Verizon lacks end user billing information, as well as any specific details of the class and type of services offered by the CLEC to the end user. The same would be true where the CLEC serves the end user using only Verizon's UNE loops (combined with the CLEC's switching). For UNE Loops and UNE-P Verizon would not have sufficient information about the class of service and features provided to the end user by the CLEC in order to unilaterally transfer the service to itself.

We requested other commenters to address the issue raised by Verizon's response to the Staff inquiry. Verizon reiterated the operational concerns described above, and presented several additional policy and cost arguments.[3] We find that the operational concerns are a sufficient reason to reject the full service alternative and therefore will not address specifically Verizon's other comments.

2. <u>Adoption of E-911 Alternative; Modification Pursuant to Comments</u>

The E-911 alternative that we have adopted attempts to ensure that a customer who fails to select another LEC, prior to termination of service by the abandoning CLEC, will retain temporary access to emergency services through the

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[3] These include claims that designating the underlying carrier (almost always an ILEC) as a default carrier is anticompetitive; that it deprives customers of their right to choose their carriers; that the Commission should focus its efforts on ensuring that the customers receive adequate warning of their need to choose another LEC and of the negative consequences they face (*i.e.*, lost service) should they fail to choose; and that designation as a default carrier creates "unknown and potentially non-recoverable financial risks. … [N]o carrier should be forced to serve customers for whom it has no available facilities, who do not meet the carrier's normal credit standards, or who for other reasons are not eligible for the carrier's services."

ability to call E-911. Local exchange carriers provide access to E-911. Section 10 follows the lead of the New York and Massachusetts "Mass Migration Guidelines" by requiring the departing CLEC to ensure that customers continue to receive E-911 service. A departing facilities-based carrier will need to maintain at least of a portion of its switching function. Resellers (including CLECs that provide service through UNE-P) will have to make arrangements with the underlying carrier (typically the ILEC) to maintain this limited form of service, if another carrier can provide the service. Although departing CLECs clearly should have the responsibility to provide continued E-911 service, we are concerned that some of these CLECs may be virtually out of business at that time and will not make the necessary arrangements.

Verizon's comments stated that it

> cannot endorse Section 10 of the proposed rule to the extent it might compel an underlying carrier to provide to the abandoning CLEC's customers who fail to choose another carrier access on their line to E-911 service (sometimes called "soft dial tone"). Verizon Maine is not in a position to offer soft dial tone on resold or UNE-based lines. Indeed, Verizon Maine is not equipped to offer soft dial tone on any of its lines – retail or wholesale – and significant expenditures would be required to add this capability. Verizon fears that such expenditures would go unrecovered in Maine if the obligation to provide soft dial tone were imposed upon it by the Rules, given that it is questionable whether an abandoning carrier would have the financial resources to reimburse Verizon Maine for the associated cost.

The Commission Staff requested clarification of what Verizon meant by the claim that it was "not in a position to offer [E-911 access] on resold or UNE-based lines." Verizon filed the following:

> There is also the suggestion in the proposed rule … that the exiting CLEC, particularly CLECs serving end users through the resale of Verizon Maine's services, should "make arrangements with its underlying carrier [*i.e.*, the incumbent LEC] to provide E-911 access." Verizon Maine opposes this proposed rule to the extent it would compel (by implication) that Verizon Maine must provide restricted E-911 access.
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> Verizon Maine's network in Maine does not have the present capability to provide restricted access to E-911 calling. … Verizon Maine presently does not support an E-911 access capability on its lines – retail or wholesale. Thus, costly additional investment and programming will be required in order for Verizon Maine to support a restricted E-911 calling option. An exiting CLEC would likely be unwilling or unable to agree to pay the costs Verizon would incur to add this capability. Because Verizon Maine is unable to support E-911 access (absent additional investment and administration), the exiting CLEC will not be able to "make arrangements" with Verizon Maine for E-911 access.

It was never the intent of the provision to make underlying carriers provide E-911 access to customers who failed to choose another carrier. The Rule places this obligation on departing CLECs. Necessarily, they can only do so if it is possible to do so. A facilities-based CLEC provides E-911 access by its own switching facilities and is able to continue to provide it after termination of other local services. Departing CLECs that provided local service through resale or UNE-P most likely cannot provide E-911 access themselves; hence, the requirement in the E-911 alternative to "make arrangements with [the] underlying carrier."

It is also not the intent of Section 10 to impose a requirement on CLECs that they cannot reasonably meet. It is beyond the scope of this rulemaking to determine whether Verizon, or any other underlying carrier, should be required to provide E-911 access on a stand-alone basis for departing CLECs. We therefore have modified the proposed provision so that, in its final form, it makes clear that departing CLECs have an obligation to provide continued E-911 access only if it is possible to provide the service themselves (in the case of facilities-based carriers) or it possible to obtain it from the CLEC's former underlying carrier or some other carrier.

Section 10 requires the departing CLEC to provide E-911 access for a period of 21 days (3 weeks) after the date that the remainder of local exchange service is terminated. The Telephone Association of Maine (TAM), which is an association of the independent ILECs in Maine, filed a comment opposing the 21-day requirement and requesting that we adopt only a 10-day requirement. TAM stated:

> As TAM understands the proposed Rule, the only time an incumbent local exchange carrier (ILEC) would be required to provide any E-911 support for customers of an abandoning carrier would be if the ILEC was providing resale or UNE-P services to the abandoning carrier. … In a competitive market place, customers must take the burdens of choosing competitors as well as the benefits. It would be unfair for the Commission to require ILECs to incur undue administrative costs, as well as potential liability, because of the actions of another carrier. TAM … suggest[s] limit[ing] the requirement to preserving E-911 service for 10 days, with an express recognition in the Rule that any liability which may arise through the provisioning of E-911 service in this interim period is attached solely to the abandoning carrier. Ten days provides sufficient time for a customer to choose a new provider, and given that requiring an underlying carrier to provide E-911 service to a customer where the underlying carrier may have no previous history with establishing the customer's address in the E-911 database, the quicker the customer chooses a permanent new carrier who can assume responsibility for the customer's E-911 address, the better.

As discussed above, the obligation to provide continued E-911 access belongs to the departing CLEC, not the underlying carrier. A departing CLEC that was a reseller or that provided service through UNE-P must make an arrangement with an underlying carrier (such as an ILEC) or another carrier only if that other carrier can provide E-911 access on a stand-alone basis. In any event, an "arrangement" means that the CLEC must contract with the other carrier, who is free to make sure it recovers its costs. An underlying carrier also is free to require indemnification for potential liability.[4]

We do not agree that only 10 days notice is adequate. In the NOR we noted that the New York and Massachusetts Guidelines require departing CLECs to provide E-911 service for only 10 days and we questioned its adequacy at that time. Our purpose is to ensure E-911 access when a customer is not at home to receive the notice of abandonment of service, or if a CLEC fails to provide notice, and we find that 10 days is not an adequate amount of notice.

TAM appears to assume that the costs that underlying carriers would incur would be much greater if they had to provide E-911 access for 21 days rather than 10. The assumption is dubious: it seems likely that most of the costs incurred would be upfront, and that providing the service for 21 days rather than 10 would add hardly any costs. In any event, as pointed out above, the E-911 access provider is entitled to recover those costs. We note that the concern is largely academic in the case of the independent ILECs. Because of the "rural exemption" in 47 U.S.C. § 251(f)(1), Maine's independent ILECs are not required to enter interconnection agreements with CLECs. We are not aware of any CLEC operating in independent ILEC service areas.[5]

H. <u>Section 11: Notice to Commission and to Retail Customers When Underlying Carrier Discontinues Service to Competitive LEC</u>

Section 11 addresses the situation in which a competitive LEC is about to lose its underlying wholesale service because it cannot pay its bills to its underlying supplier that is providing it with discounted wholesale service, UNEs or UNE-P. If underlying service is cut off to a CLEC, especially one without its own facilities, it is most unlikely that it will be able to continue to provide service to its retail customers. The Commission has faced several such circumstances recently. Subsection A requires any LEC that has served notice of disconnection or possible disconnection to a CLEC to provide notice simultaneously to the Commission. Subsection B requires the CLEC that will be disconnected to provide notice to its customers that it will discontinue local service or that there is a strong likelihood that it will need to do so. Paragraphs B(2) and B(3) provide exceptions to this notice requirement if the CLEC can convince the Commission that either exception should apply.

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[4] Unlike Verizon, it appears the most of the independent ILECs in Maine have the technical capability to provide stand-alone E-911 service. Some of the responders to a staff inquiry on this subject pointed out that they had never had the opportunity to actually test the capability. As noted below (and as noted by some of the responders to the inquiry), there are no CLECs operating on independent (rural) ILEC service areas.

[5] A CLEC could provide service in an independent ILEC service area only if it used only its own facilities, including switching.

Subsection A requires notice by the disconnecting carrier of at least 28 days (4 weeks) unless a longer period is specified in the interconnection agreement between the two carriers. Verizon commented:

> The Commission should take great care before adopting rules in this area so as not to circumvent agreed upon notice periods or other contractual rights. … What the Commission should not do is require Verizon to continue to provide wholesale services and UNEs to CLECs beyond the notice requirements of their contracts, when there is no reasonable expectation that the CLEC will be able to pay for such services.

In the NOR, we stated that we were not aware of whether some interconnection agreements contain periods shorter than 28 days, but, if so, we intended to override those provisions because otherwise there would not be sufficient time under subsection B(1) to allow the carrier subject to disconnection to prepare notice and send timely notice to its customers. Verizon's comment provides no information about whether there are actually shorter periods contained in some of its interconnection contracts. The law is clear the Commission may override contractual provisions when they impede a reasonable Commission policy. *See Public Utilities Commission, Proposed Amendments to Chapters 62 and 65*, Docket No. 86-164, Order Adopting Amendments to Rules (January 27, 1987) at 10-15. Sections 7, 8 and 9 of the Rule each require 30 days notice by a carrier that voluntarily abandons service, and the FCC's regulations governing transfers of customers require the same amount of time. The purpose of these notice periods is to allow customers sufficient time to find a new carrier. Section 11, by contrast, requires only 14 days notice to customers. The total period or 28 days (the amount of notice the underlying carrier must provide to the nonpaying CLEC) includes only 14 days for the CLEC to prepare and deliver notice to its customers. Section 11 therefore attempts take into account the fact that requiring an underlying carrier to provide continued service creates potential financial risk to the underlying carrier. We do not see how we can require less than 14 days for a nonpaying CLEC to prepare and send notice to its customers or less than 14 days between when customers receive notice and must obtain a new ILEC or be cut off from local exchange service. If Verizon believes that the carrier will not be able to pay it for the full period following its notice to the Commission, it may need to consider sending such the notice to the nonpaying carrier (and to the Commission) sooner, so that the entire notice period begins sooner.

I. <u>Section 12: Transfer of Customer Accounts to a Different Carrier, with or without Abandonment Of Service</u>

Carriers that wholly or partially abandon service often transfer their customer accounts to another carrier. Transfers of customer accounts raise issues of notice and (potentially) slamming, i.e., the transfer of a customer to a carrier without the informed consent of the customer. The Federal Communications Commission (FCC) has addressed these issues comprehensively in regulations contained in 47 C.F.R. § 1120(e). These regulations apply both to interstate and intrastate service. Congress has specifically authorized the FCC to prescribe procedures for changes in a telephone subscriber's "exchange service." 47 U.S.C. § 258(a). The regulation states:

(e) A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base without obtaining each subscriber's authorization and verification in accordance with Sec. 64.1120(c), provided that the acquiring carrier complies with the following streamlined procedures.

47 C.F.R. § 1120(e). Essentially, the “streamlined” FCC procedures require that the acquiring carrier provide notice to the FCC and to all customers who will be switched to that carrier. The acquiring carrier must provide these notices at least 30 days prior to the transfer. The notice to customers must include the date of the transfer, the rates of the new carrier, the right of the subscriber to choose another carrier, and other specified information. A copy of Section 1120(e) is attached to this Order as Attachment A.

Section 12(A) of the Rule supplements the FCC rule by requiring the acquiring carrier to provide this Commission with notice of the proposed transfer of customers. That notice must be accompanied by a copy of the notice to customers required by the FCC regulations, a copy of the certification of compliance with the FCC’s customer notification requirement that must be filed with the FCC, and, if applicable, a copy of the notice to customers of any rate increases required by Section 12(I).

Subsections B – D of Section 12 address two related matters that often occur in conjunction with transfers of customers but that are not addressed in the FCC regulations. These are whether the transferring carrier is abandoning authority to provide service and whether the acquiring carrier needs to obtain any authority. If either is necessary, Subsection B requires that the required notices or applications must accompany the notice of transfer that the acquiring carrier must file with the Commission. A carrier that is abandoning its authority to provide service or is discontinuing a class of service or service to a specified customer class must comply with the notice provisions contained elsewhere in the Rule (Sections 7, 8 or 9). A carrier that needs authority to provide service (including partial authority) must apply for that authority pursuant to 35-A M.R.S.A. §§ 2102 and 2105 and Chapter 280 of the Commission’s Rules.

Subsection C addresses the need for the acquiring carrier to obtain authority from the Commission to provide service if it does not already have such authority. It addresses the application process and the order that the Commission must issue. It also states the requirement that the Commission must approve the acquiring carrier’s rate schedules before it may provide service. Subsection C(3) states that the acquiring carrier may adopt or incorporate the rate schedules of the transferring carrier (e.g., by reprinting them with the new carrier’s name) or propose its own new schedules. The latter method undoubtedly takes longer, although the use of standard general terms and conditions available and recommended by the Commission minimizes delays in the approval process.

Subsection D addresses the rate schedules that will apply to transferred customers when the acquiring carrier already has authority to provide service. Subsection D(1) allows the acquiring carrier to adopt or incorporate the rate schedules of the transferring carrier. It is not uncommon for some acquiring carriers to have two sets of rate schedules with different rates for existing and transferred customers. Subsection D(2) allows the acquiring carrier to apply its own existing rate schedules to the transferred customers. If it does so, however, and the transferred customers will face higher rates (or higher effective costs), it must provide notice pursuant to Section 12(H). See discussion of Section 12(H) below.

Subsection E states that if the competitive transferring carrier is abandoning service or relinquishing its authority to provide service, it must comply with the applicable provisions of Sections 7-9.

Subsection F requires acquiring carriers to comply with the notice and other requirements of 47 C.F.R. § 64.1120(e) and subsection G states that if an acquiring carrier complies with that regulation and this rule, it will not be liable for slamming (unauthorized change of carrier) under 35-A M.R.S.A. § 7106 and Chapter 296. Under the FCC regulation, the notice must inform customers that they have the option to opt out of any transfer; this notice removes the greatest potential harm from slamming – that customers are transferred without knowledge, often to a carrier with much higher rates. The purpose of the FCC regulation is to provide an exception to the restrictions on slamming provided elsewhere in the federal regulations. That is also the purpose of Section 12(G) of this Rule.

Finally, subsection H requires acquiring carriers to provide notice of any rates that apply to customers who will be transferred that may exceed those of the customer's present carrier (the transferring carrier). It also requires notice when the terms and conditions (including bundled packages or lack thereof) may result in higher costs for customers. We recognize that it may be impossible for an acquiring carrier to predict which customers are likely to face increased costs as a result of different terms and conditions. Carriers that want to apply their own rate schedules (rather than adopt those of the transferring carrier) may well have to err on the side of caution and send notice to all customers.

We see little practical difference between a carrier that raises its rates and the transfer from a carrier with lower rates to one with higher rates. A carrier that must provide notice pursuant to this subsection I must comply with the notification requirements in Section 13 that are applicable to all notices required by this Chapter. Those provisions are essentially the same as those contained in Chapter 291, § 9 (for non-ETC LECs) and Chapter 292, § 10 (for interexchange carriers). Although those provisions apply to rate increases by a customer's present carrier, and here the acquiring carrier is not necessarily raising its own rates, from the perspective of a customer who is transferred from a carrier with lower rates to a carrier with higher rates, the effect is the same. [6]

The major difference between the notice required by Sections 12(H) (and cross-referenced Section 13), and those under Chapters 291 and 292, is that the latter require 25 days notice, whereas the notice required by subsection H is 30 days. The different period is necessary because the federal regulation governing the notice of the transfer itself requires 30 days for that notice, and it would make no sense to require a different period for the notice required by subsection H. Subsection H therefore states that notice of rate increase must be enclosed with the transfer notice.

J. <u>Section 13: Form and Manner of Delivery of Customer Notices Required By This Chapter</u>

Section 13 governs the form and manner of delivery of all notices required by this Rule. Sections 13(A) and (B) are based on similar provisions contained in Chapters 291, §10 and 292, §9 (discussed above in conjunction with Section 12(H)). Section 13(A), states, however, that the notice may be in the form of an e-mail if the notice is one required by Section 7, 8 or 9 (but not Section 12) and the sender has complied with the requirements of 10 M.R.S.A. §§ 9401 *et seq.* and, if applicable, 15 U.S.C. §§ 7001 *et seq*. Section 13-A does not permit e-mail for the customer notice required by Section 12 (transfers of customers). The Commission staff has received an informal opinion from an FCC staff attorney that 47 C.F.R. §64.1120(e), which requires "written notice" to customers who will be transferred does not permit notices to customers by e-mail. That provision is binding on the states, and is referenced in Section 12.

We requested comment about whether the Rule should permit notices of abandonment to customers (under Sections 7-9) to be sent by e-mail rather than by U.S. mail. We received no comment and we adopt Section 13(A) as proposed. We note that some customers receive bills or statements from telecommunications providers by e-mail. We also note, however, that the requirements of the two referenced statutes (10 M.R.S.A. §§ 9401 *et seq.* and 15 U.S.C. §§ 7001 *et seq*.)

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[6] The notice requirement in Chapter 292 (Standards for Billing, Credit and Collection, and Customer Information for Interexchange Carriers) is required by statute, 35-A M.R.S.A. § 7307. In Chapter 291, which applies to non-ETCs (non-eligible telecommunications carriers, i.e., CLECs not eligible for universal service funding), the Commission decided that the same notice requirements should apply by rule for changes in rates by competitive LECs, even though there is no legislative requirement. We saw no reason to distinguish between the two circumstances. *See Public Utilities Commission, Standards for Billing, Credit and Collection, Termination of Service, and Customer Information for Eligible, Non-Eligible, and Interexchange Telecommunications Carriers (Chapters 290, 291and 292)*, Order Adopting Rules (June 20, 2002) at 12-13. For similar reasons, we decide in this rulemaking that those notice requirements should apply to the circumstance described in Section 12(H)

appear to be fairly stringent. Compliance with one will only partially meet the requirements of the other. The federal statute applies only to “any transaction in or affecting interstate or foreign commerce.” We received no comments about whether the provision of intrastate telephone service is such a transaction.

The “general rule” in Subsection C concerning the inclusion of promotional materials is also identical to the parallel provisions in Chapters 291 and 292; it states that the notices required by this chapter cannot contain promotional materials. The purpose of this provision is to ensure that customers will see the actual notice and not ignore it because the envelope is full of other materials.

Subsection C(2) states a limited exception for the situation when an acquiring carrier sends the notice of transfer. If the acquiring carrier has the same or lower rates than the transferring carrier, it may include promotional material. There is still some risk that the promotional material may distract the customer from reading the actual notice; however, Section 13(A) requires that all notices required under this rule (here, of the transfer) must be in a letter or a bill insert that contains only the notification language. We believe there is little potential harm to customers if service is transferred to a carrier that continues the same rates. Unlike most of the other circumstances addressed by this Rule, customers are not subject to a loss or service. As long as the additional promotional material does not obscure what is effectively a rate increase (in which case the exception is not applicable), we believe that a carrier that has paid for customer accounts should be able to market itself to its new customers, particularly since the notice must inform customers of their right to choose another carrier. This circumstance is not dissimilar to the numerous changes in ownership and consolidations that have taken place over the past few years among Maine’s independent ILECs. We requested comments on whether the proposed exception struck the correct balance among the marketing interests of acquiring carriers, the possible value to customers of learning about services offered by the acquiring carrier, and the need to ensure that customers are aware of the central message of the mailings. We received no comments and will adopt the proposed provision.

Finally, subsection D (which applies to all transfers, whether or not the acquiring carrier has higher rates) requires prominent notice on the outside of the envelope (or in the subject line if an e-mail notice is permitted) that the customer’s telephone service is being transferred. Normally, the notice will be delivered in an envelope bearing the name of the acquiring carrier because the FCC regulation requires the acquiring carrier to provide the notice; often the transferring carrier is nearly out of business. Without such a warning, many recipients of an envelope sent by a company whose name is unfamiliar might assume the mailing is junk mail and might not bother to open or read it. If, under Section 13(A), a carrier may provide notice of termination by e-mail, subsection D requires an equivalent warning in the subject line of the e-mail. We requested comments on whether any other states have envelope notice requirements such as that proposed here. We also requested comments about the extent of compliance in those states, if any, that have such requirements and the likelihood of compliance in Maine if it alone, or as one of only a few states, has the requirement. We received no comments addressing these questions. We adopt Section 13(D) as proposed.

K. Section 14: Exemption from Requirements of 35-A M.R.S.A. § 1104

Section 1105 of Title 35-A allows the Commission to exempt a utility or group of utilities from any of the requirements of Sections 1101–1104. The Commission exempted competitive LECs and IXCs from Sections 1101– 1103 in Chapter 212 of these Rules. In this Chapter, we exempt the same group of telephone utilities from the approval requirements of Section 1104 (to abandon service and to have its authority to provide service terminated), to the extent stated in Sections 4-9 of this Chapter.

As required by Section 1105, we believe that this exemption is in the public interest and will not have a negative impact on competitive markets for telephone service. Free entry to competitive telephone markets, as mandated by 47 U.S.C. § 253(a), also implies free exit. As noted at the outset of this Order, there are large numbers of competitive local and interexchange carriers. As discussed above in conjunction with the definition of "competitive telecommunications carrier" in Section 2(E), we apply the simplified procedures of the Rule to competitive IXCs and CLECs, except those CLECs that receive funding from the Maine Universal Service Fund (MUSF).

The waivers contained in this Rule do not apply to ILECs, to interexchange service provided by ILECs, and, if there are any CLECs that might receive funding from the MUSF in the future, to those CLECs. We strictly regulate the local rates of the independent ILECs and Verizon. The local rates of all ILECs have been established in recent revenue requirement and USF proceedings and Verizon's local rates are subject to a rate cap under the alternative form of regulation (AFOR) for Verizon. Although we have never formally designated any of the ILECs as "carriers of last resort," we have found all ILECs to be eligible telecommunications carriers (ETCs) for federal universal service funding pursuant to 47 U.S.C. §§ 214(e) and have ordered state universal service funding (USF) for several of the independent ILECs. In short, we expect that these carriers will continue to be dominant or at least very significant providers of local exchange service. If an ILEC should ever propose to discontinue service, the Commission would be actively involved and the discontinuance will require full Commission approval. We believe a similar policy should apply to a CLEC that receives USF. At this time, we cannot say how we would determine the amount of USF for a CLEC; nevertheless, a CLEC that received USF presumably would have some obligation to provide service consistent with that public funding, and its decision to discontinue that service should be reviewed by the Commission.

L. Section 15: Duties of Administrative Director; Delegation of Authority

Section 15 delegates to the Administrative Director the obligation to determine whether any of the exceptions stated in Sections 4 through 7 of the Rule exist, in which case the waivers of the approval requirements do not apply and the carrier must obtain the approval of the Commission to abandon or discontinue service.

M. Section 16: Waiver or Exemption

Section 16 contains the standard waiver or exemption provision that is contained in most Commission rules.

V. ORDERING PARAGRAPHS

Accordingly, we

1. ADOPT Chapter 293, Abandonment of Service and Authority to Provide Service and Transfer of Customers by Competitive Telecommunications Carriers;

2. ORDER the Administrative Director send a copy of this Order and the attached rule to:

   a. The Office of Public Advocate;

   b. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5);

   c. The Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

   d. The Administrator of the Maine Telecommunications Education Access Fund and Maine Universal Service Fund; and

3. ORDER the Administrative Director to send notice of this Order and amended rules to:

   a. All local exchange and interexchange carriers in the State of Maine;

   b. All persons included in the service lists for proceedings conducted under this Rule during the past 5 years;

   c. All people who have filed with the Commission within the past year a written request for any Notice of Rulemaking.

Dated at Augusta, Maine, this 5th day of November, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus